

STATE OF MICHIGAN
COURT OF APPEALS

ROSEMARY ADAMSKI,

Plaintiff-Appellant,

v

TOWNSHIP OF ADDISON,

Defendant-Appellee.

UNPUBLISHED

December 11, 2003

No. 241474

Oakland Circuit Court

LC No. 01-034991-AS

Before: Murray, P.J., and Gage and Kelly, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting summary disposition in favor of defendant. We reverse the trial court's grant of summary disposition to defendant, and remand for further proceedings. We decide this case without oral argument pursuant to MCR 7.214(E).

By letter dated July 9, 2001 plaintiff submitted a request pursuant to the Freedom of Information Act (FOIA), MCL 15.231 *et seq.*, for a copy of the tape of the December 4, 2000 meeting of defendant's Board of Trustees. In a response dated July 17, 2001 defendant denied plaintiff's request for a copy of the tape for the reason that, pursuant to its record retention schedule and meeting guidelines, copies of such tapes were available only until written meeting minutes were approved. Defendant's denial letter indicated that plaintiff could make an appointment to come to the Township office and listen to the tape, and set forth her statutory rights to appeal the decision.

Plaintiff filed suit alleging that defendant violated the FOIA by denying her request for information that was not exempt from disclosure under MCL 15.243. She sought an order requiring defendant to release the requested information, and requested an award of costs and attorney fees. On several occasions after the lawsuit was filed defendant informed plaintiff that she was entitled to listen to and copy the tape.

Plaintiff moved for summary disposition pursuant to MCR 2.116(C)(9) and (10), arguing that pursuant to MCL 15.233(1) she was entitled to receive a copy of the tape, and that defendant's offer to allow her to listen to the tape did not comply with the statute. Plaintiff sought an order requiring defendant to furnish her a copy of the tape. She also requested costs and fees and \$500 in punitive damages. In response defendant asserted that it never denied plaintiff access to the tape, and asserted that its procedure complied with MCL 15.233(1).

Defendant requested summary disposition pursuant to MCR 2.116(I)(2). After plaintiff filed this motion, defendant also provided a copy of the tape to plaintiff.

The trial court denied plaintiff's motion for summary disposition and granted summary disposition in favor of defendant. The trial court found that defendant gave plaintiff the opportunity to listen to and copy the tape, and did not deny plaintiff access to the tape. The trial court concluded that plaintiff did not establish that defendant violated the FOIA, and that plaintiff was not entitled to costs and fees.

We review a trial court's decision on a motion for summary disposition de novo. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001).

Statutory interpretation is a question of law subject to de novo review on appeal. The primary purpose of statutory interpretation is to ascertain and give effect to the intent of the Legislature. If the plain and ordinary meaning of statutory language is clear, judicial construction is neither necessary nor permitted. *Oakland Co Treasurer v Title Office, Inc*, 245 Mich App 196, 200-201; 627 NW2d 317 (2001).

Under the FOIA, a public body must disclose all public records that are not specifically exempt from disclosure. MCL 15.233(1). A township is a public body. MCL 15.232(d)(iii). Public records subject to the FOIA include writings prepared, owned, used, possessed, or retained by a public body in the performance of an official function, MCL 15.232(e), and include electronic records. *Oakland Co Treasurer, supra* at 203. Upon furnishing a sufficiently descriptive request, a person has the right to inspect, copy, or receive copies of a public record not exempt from disclosure. MCL 15.233(1). The FOIA entitles a person to inspect or copy the actual public record, in its stored format, and not merely the information contained therein. *Oakland Co Treasurer, supra*. The right may be limited by reasonable rules to protect public records and to prevent excessive and unreasonable interference with the functions of the public body. MCL 15.233(3).

If a plaintiff in an FOIA action prevails, the trial court must award reasonable costs, attorney fees, and disbursements. MCL 15.240(6). A party prevails in a FOIA action when the action was reasonably necessary to compel the disclosure, and the action had a substantial causative effect on the delivery of the information to the plaintiff. *Meredith Corp v Flint*, 256 Mich App 703, 713; ___ NW2d ___ (2003). If the trial court determines that the public body arbitrarily and capriciously violated the FOIA by refusal or delay in disclosing or providing copies of a nonexempt public record, it must award the requesting party \$500 in punitive damages. MCL 15.240(7).

Plaintiff argues that the trial court erred by denying her motion for summary disposition and granting summary disposition in favor of defendant. We agree.

The language within MCL 15.233(1) is quite clear, in that it grants a person the right to “inspect, copy, or receive copies of the requested public record of the public body.”¹ In this case, plaintiff submitted a written freedom of information request requesting “a copy of the tape(s) from the December 4, 2000 Addison Township regular board of trustee’s meeting.”² On July 17, 2001 defendant’s FOIA coordinator wrote back to plaintiff indicating that “your request for records from Addison Township has been *denied*” (emphasis added). The “reason for denial,” the defendant indicated, was that “copies (of tapes) will be available *until* the approval of the minutes” (emphasis added). As defendant noted in the trial court and to this Court, the minutes had been approved many months before plaintiff’s FOIA request. Accordingly, defendant indicated in the denial that plaintiff “may come to the township and listen to the tape. Please call and arrange a time.” Immediately after this statement, the correspondence set forth plaintiff’s right to appeal this denial as provided under the FOIA.

As plaintiff argues, there is no language within this July 17, 2001 denial which indicates that plaintiff is entitled to a copy of the tape. Indeed, the exact opposite is gleaned from the denial. Quite simply, plaintiff was requesting a copy of the tape; what she received in return from this request was a *denial*. If, as defendant argues, defendant was actually complying with plaintiff’s request for a copy of the tape, it would not have issued a denial.³ However, the evidence is not as defendant argues. Rather, the evidence is undisputed that defendant denied plaintiff’s request for a copy of the record, and instead offered her the opportunity to listen to the tape.

The record also reflects that the first time defendant offered a copy of the tape was on October 22, 2001. On that date, defendant counsel, *after* plaintiff initiated the lawsuit, indicated that plaintiff “is free to call and come to the township to listen to and copy the tape.” There is no evidence before this Court that defendant had previously indicated to plaintiff that she could have a copy of the tape. In our view, the plain language of MCL 15.233(1) required defendant to provide plaintiff with a copy of the tape of the board meeting once it determined that it was a public record (which is not disputed) and not subject to exemption (which is also not disputed). See *Farrell v Detroit*, 209 Mich App 7, 14-15; 530 NW2d 105 (1995).

Defendant’s argument that under MCL 15.233(3), the Legislature only intended for a person seeking the information to have access to the documents is without merit. First, MCL 15.233(1) is a positive statutory command granting a person the right to obtain a copy of a public record. Second, by its plain terms MCL 15.233(3) simply provides that the public body must furnish a requesting person a reasonable opportunity for inspection and examination of its public records and reasonable facilities for making memoranda or abstracts from the public records during usual business hours. Thus, under this statutory provision a public body cannot make its documents and facilities available only at unique hours or in unique places which would

¹ There is no dispute that the tape is a public record and that defendant is a public body.

² Plaintiff does not contend that she was entitled to receive a copy of the tape from defendant free of charge. A public body may charge a fee for copying a public record. MCL 15.234(1).

³ There is no suggestion that the tape was exempt from disclosure.

unreasonably interfere with a requesting party's request to inspect documents.⁴ It does not say, as defendant would have us hold, that the only obligation on a public body is to provide a person with an opportunity to inspect and examine its public records. If that were the case, the Legislature certainly would not have provided in the same section of the statute that a person has a "right" to a copy of a public record.

For the foregoing reasons, we hold that the trial court erred in granting defendant's motion for summary disposition. We therefore reverse the trial court order and remand for further proceedings consistent with this opinion. We do not retain jurisdiction.⁵

/s/ Christopher M. Murray

/s/ Kirsten Frank Kelly

⁴ Nothing in our opinion limits a public bodies' authority to provide reasonable rules regarding inspection and examination of public records. As we have previously held, MCL 15.233(3) grants public bodies the right to make such reasonable rules in order to protect public records and to limit overuse of public facilities. See, eg. *Cashel v Univ of Michigan Regents*, 141 Mich App 541, 550; 367 NW2d 841 (1985). The issue in this case does not implicate that statutory provision.

⁵ We express no opinion about plaintiff's request for costs and attorney fees. We do, however, agree with our concurring colleague's suggestion that the trial court consider plaintiff's actions in pursuing this case after she received the tape.